contested the adjudicatory stage of a juvenile proceeding in which he was determined to be a delinquent having been found to have committed the crime of larceny under a "preponderance of the evidence" standard established by the New York Family Court Act. This Court ruled that the due process clause of the 14th Amendment requires guilt of a criminal charge to be proven beyond a reasonable doubt. *Winship*, 397 U.S. at 364, 90 S.Ct. at 1073. However, the Court expressly noted that its decision was not concerned with the post-adjudicative or dispositional process.

> As in [*In re*] *Gault* [387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)], "we are not here concerned with * * * the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process." 387 U.S., at 13, 87 S.Ct., at 1436. In New York, the adjudicatory stage of a delinquency proceeding is clearly distinct from both the preliminary phase of the juvenile process and from its dispositional stage. See N.Y. Family Court Act §§ 731-749.

Winship, 397 U.S. at 359, 90 S.Ct. at 1070, footnote 1. This Court recently confirmed in *Dretke v. Haley*, 541 U.S. 386, 395, 124 S.Ct. 1847, 1853, 158 L.Ed.2d 659 (2004): "We have not extended *Winship's* protections to proof of prior convictions used to support recidivist enhancements."

Questions regarding whether or not *Winship* applies post-conviction to a mandatory minimum sentencing process were resolved by this Court in *McMillan v. Pennsylvania*, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986). In *McMillan*, defendants challenged Pennsylvania's Mandatory Minimum Sentencing Act (MMSA) which subjected them each to a mandatory minimum term of five

years imprisonment after conviction of certain enumerated felonies since the judge found at the sentencing hearing, by a preponderance of the evidence, that each defendant visibly possessed a firearm during the commission of their respective offenses. This Court rejected arguments that *Winship* required proof of this sentencing factor to be proven beyond a reasonable doubt since the MMSA did not alter the maximum penalty and "only becomes applicable after a defendant has been duly convicted of the crime for which he is to be punished." *McMillan*, 477 U.S. at 87, 106 S.Ct. at 2417.

Petitioner Greene was duly convicted of a DUI in the proceedings below, and Washington's DUI sentencing statute does not alter the maximum sentence for the offense. The maximum sentencing for a DUI is set forth in Revised Code of Washington § 46.61.502(5) which states that "[a] violation of this section is a gross misdemeanor." The maximum penalty is one year in jail and a fine of five thousand dollars ($5,000.00). *See*, Revised Code of Washington § 46.61.5055, Revised Code of Washington § 9.92.020, and Revised Code of Washington § 9A.20.021(2). The mandatory minimum sentencing grid established by Revised Code of Washington § 46.61.5055 does not alter these maximum penalties. Regardless of the number of offenses, a person may not be imprisoned "more than one year." Revised Code of Washington §§ 46.61.5055(1)(a)(I), (1)(b)(I), (2)(a)(I), (2)(b)(I), (3)(a)(I), and (3)(b)(I). Regardless of the number of offenses, a person may not be fined more than five thousand dollars ($5,000.00). Revised Code of Washington §§ 46.61.5055(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (2)(b)(ii), (3)(a)(ii), and (3)(b)(ii). Nowhere does Revised Code of Washington § 46.61.5055 restrict a court's ability

to impose a sentence up to the statutory maximum for any conviction without regard to whether it was a first, second, or subsequent offense. The sentencing statute "operates solely to limit the sentencing court's discretion in selecting a penalty within the range already available to it without the special finding. . . ." *McMillan*, 477 U.S. at 88-89, 106 S.Ct. at 2417.

The *McMillan* court explained that the Due Process test applied to discretionary sentencing considerations and mandatory minimum sentencing factors is the same:

> Petitioners apparently concede that Pennsylvania's scheme would pass constitutional muster if only it did not remove the sentencing court's discretion, *i.e.*, if the legislature had simply directed the court to *consider* visible possession in passing sentence. Brief for Petitioners 31-32. We have some difficulty fathoming why the due process calculus would change simply because the legislature has seen fit to provide sentencing courts with additional guidance. . . .

McMillan, 477 U.S. at 91-93, 106 S.Ct. at 2419-2420 (citations and footnotes omitted). Sentencing courts have long been permitted to consider *Williams* type information for discretionary sentencing purposes. Due process calculus does not change simply because a court is dealing with legislated mandatory minimum sentencing rather than its own discretionary sentencing authority. *McMillan*, 477 U.S. at 92-93, 106 S.Ct. at 2419-2420; *cf. Witte v. U.S.*, 515 U.S. 389, 401, 115 S.Ct. 2199, 2207, 132 L.Ed.2d 351 (1995) ("We are not persuaded by petitioner's suggestion that the Sentencing Guidelines somehow change the

constitutional analysis. A defendant has not been 'punished' any more for double jeopardy purposes when relevant conduct is included in the calculation of his offense level under the Guidelines than when a pre-Guidelines court, in its discretion, took similar uncharged conduct into account.")

McMillan's Due Process analysis continues to apply. This Court reaffirmed *McMillan* in *Harris v. U.S.*, 536 U.S. 545, 122 S.Ct. 2406, 153 L.Ed.2d 524 (2002). The defendant in *Harris* was convicted of a drug trafficking offense which carried a mandatory minimum sentence of five (5) years imprisonment when a firearm was not involved, but it carried a mandatory minimum sentence of seven (7) years if a firearm was brandished. The Court rejected the defendant's contention that *McMillan* had been superseded, writing:

> Reaffirming *McMillan* and employing the approach outlined in that opinion, we conclude that the federal provision at issue, 18 U.S.C. § 924(c)(1)(A)(ii), is constitutional. Basing a 2-year increase in the defendant's minimum sentence on a judicial finding of brandishing does not evade the Fifth and Sixth Amendments' requirements. Congress "simply took one factor that has always been considered by sentencing courts to bear on punishment . . . and dictated the precise weight to be given that factor." *McMillan,* 477 U.S., at 89-90, 106 S.Ct. 2411.

Harris, 536 U.S. at 568, 122 S.Ct. at 2420 (plurality opinion). The *McMillan* analysis remains unaltered in the present context by this Court's recent 6th Amendment jurisprudence, because Washington's DUI sentencing statute does not authorize imposition of a sentence in

excess of the one year statutory maximum penalty, and that maximum penalty could be applied by the sentencing judge without resort to the defendant's criminal history or any additional finding beyond a defendant's current conviction. *See, Blakely v. Washington,* 542 U.S. 296, 304-305, 124 S.Ct. 2531, 2538, 159 L.Ed.2d 403 (2004); *see also, Apprendi v. New Jersey,* 530 U.S. 466, 490, 120 S.Ct. 2348, 2362-2363, 147 L.Ed.2d 435 (2000), *United States v. Booker,* 543 U.S. 220, 125 S.Ct. 738, 756, 160 L.Ed.2d 621 (2005).

Petitioner Greene was convicted of DUI in the underlying proceedings, and she is subject to punishment for that conviction. On the basis of that conviction, alone, Petitioner could be sentenced to serve a year in jail and to pay a $5,000 fine. Under *Williams* and its progeny, a court may consider a wide array of information beyond just prior convictions for sentencing purposes. A sentencing court would be entitled to consider Petitioner Greene's entire unchallenged driving record and criminal history when assessing a discretionary sentence. Revised Code of Washington § 46.61.5055(12)(a)(v) enhances a defendant's mandatory minimum sentence only on the basis of certain enumerated *convictions*, and *Williams* type information is utilized only as a limiting element which narrows the scope of qualifying convictions. The decision in *Greene* neither conflicts with *Winship* nor does it tread new ground regarding the types of information which may be considered by sentencing courts.

CONCLUSION

The City of Walla Walla requests that this court deny Ms. Greene's Petition for a Writ of Certiorari.

January 9, 2006

Respectfully submitted,

TIM DONALDSON
Counsel for Respondent

Appendix

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or

hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

46.61.5055. Alcohol violators – Penalty schedule. (1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(I) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(I), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(I) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(I), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720.

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW

46.20.308 there is no test result indicating the person's alcohol concentration:

(I) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(I) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720.

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW

46.20.308 there is no test result indicating the person's alcohol concentration:

(I) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(I) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720.

(4) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW

46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(5) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(6) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(7) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(I) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15, or if by reason of the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(I) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years.

For purposes of this subsection, the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(8) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department

shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(9)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (I) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(I) and (ii) or (a)(I) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(10) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the

jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.

(11) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

(12) For purposes of this section:

(a) A "prior offense" means any of the following:

(I) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(I), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522; and

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense.

46.61.513. Criminal history and driving record. (1) Immediately before the court defers prosecution under RCW 10.05.020, dismisses a charge, or orders a sentence for any offense listed in subsection (2) of this section, the court and prosecutor shall verify the defendant's criminal history and driving record. The order shall include specific findings as to the criminal history and driving record. For purposes of this section, the criminal history shall include all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor, current to within the period specified in subsection (3) of this section before the date of the order. For purposes of this section,

the driving record shall include all information reported to the court by the department of licensing.

(2) The offenses to which this section applies are violations of: (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504 or an equivalent local ordinance; (c) RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug; (d) RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug; and (e) RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(3) The periods applicable to previous convictions and orders of deferred prosecution are: (a) One working day, in the case of previous actions of courts that fully participate in the state judicial information system; and (b) seven calendar days, in the case of previous actions of courts that do not fully participate in the judicial information system. For purposes of this subsection, "fully participate" means regularly providing records to and receiving records from the system by electronic means on a daily basis.